



DEPARTMENT OF HEALTH & HUMAN SERVICES

CENTERS FOR MEDICARE & MEDICAID SERVICES

WESTERN CONSORTIUM

DIVISION OF SURVEY AND CERTIFICATION

Refer to: DSC-SOCB-RH

August 11, 2003

Diane L. Ford, Chief
California Department of Health Services
Field Support Branch
1615 Capitol Avenue, Room 73.741, MS 3400
P.O. Box 942732
Sacramento, CA 94234-7320

COPY FOR YOUR
INFORMATION

Dear Ms. Ford:

SUBJECT: Supervision of CRNAs in Federally Certified Ambulatory Surgery Centers

In your June 11, 2003 letter to the Centers for Medicare & Medicaid Services (CMS), you requested a response to the following questions:

- 1) Is a podiatrist included in the term physician for all the acts and services that CMS regulations require be performed by a physician in federally certified Ambulatory Surgery Centers (ASCs)?

Answer: In section 1861(r) of the Social Security Act, the definition of "physician" includes, "a doctor of podiatric medicine...but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them."

- 2) Can a podiatrist legally supervise the administration of general anesthesia by a CRNA in an ASC when CMS requires physician supervision of that act, California specifically prohibits a podiatrist to administer general anesthesia, and the Governor of California has not exercised his authority to seek exemption from the physician supervision of a CRNA requirement.

Answer: Only if a podiatrist is permitted by California State Law to administer or supervise the administration of general anesthesia, would he or she be permitted to supervise the administration of general anesthesia by a non-physician (e.g. CRNA).

By this letter, CMS is affirming its positions stated in the November 21, 2001's letter (copy enclosed) that was sent to the California Association of Nurse Anesthetists.

Denver Regional Office
1600 Broadway, Suite 700
Denver, CO 80202

San Francisco Regional Office
75 Hawthorne Street, 4th Floor
San Francisco, CA 94105

Seattle Regional Office
2201 Sixth Avenue, RX-48
Seattle, WA 98121

Should you have any questions concerning this letter, please contact Ron Ho of my staff 415-744-2835. Specific questions about ASC facility requirements and survey may be directed to Patricia Williams of my staff at 415-744-2837.

Sincerely,



Steven D. Chickering, Manager
Hospital and Community Care Operations Branch
Division of Survey and Certification
San Francisco Regional Office

Enclosure: CMS Letter to CANA, November 21, 2001

cc: Mr. Frank Camozzi, CMS-SF Regional Office, Division of Medicare Operations
Mr. Joseph Conkle, California DHS, Office of Legal Services
Ms. Rae DeLong, California DHS, Office of Legal Services
Mr. Andrew Govenar, Governmental Advocates, Inc.
Mr. Philip Recht, Mayer, Brown, Rowe & Maw
Mr. George R. Ritter, California Department of Consumer Affairs
Mr. Joseph Stein, HHS, Office of the General Counsel -- San Francisco
Dr. Anthony Way, California DHS, Chief Medical Consultant

San Francisco Regional Office

November 21, 2001

Mr. Timothy J. Wolf, CRNA
Chairman, Practice Committee
CANA, Inc.
724 West Maple Street
Orange, California 92866

Dear Mr. Wolf:

This letter is in response to your October 25, 2001 letter requesting interpretation of the Condition for Coverage for Ambulatory Surgical Centers (ASC) definition of "physician" as it applies to a podiatrist and the scope of services provided by a podiatrist in an ASC.

We have consulted with CMS Central Office staff in formulating our responses.

Q1. Is a podiatrist considered a physician as the term is used in Part 416, Subpart C?

A1. In section 1861(r) of the Social Security Act the definition of "physician" includes, "a doctor of podiatric medicine...but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them." The Conditions of Coverage for ASCs (42 CFR 416 Subpart C) do not further define the term "physician," therefore, a podiatrist is considered a physician for the purposes of 42 CFR 416 Subpart C if he or she is performing duties which he or she is legally authorized to perform in accordance with State law.

Q2. Section 416.41 requires the ASC to have a transfer agreement or all physicians performing surgery in the ASC must have admitting privileges in a hospital. Would the requirement be fulfilled if the podiatrist has admitting privileges?

A2. If an ASC does not have a written transfer agreement with a local Medicare-participating hospital or a local non-participating that meets the requirements for payments for emergency services, all physicians performing surgery in the ASC must have admitting privileges at such a hospital. This requirement includes podiatrists performing surgery in the ASC.

Q3. Section 416.42(a) requires that a physician must examine the patient immediately before surgery to evaluate the risk of anesthesia. May a podiatrist fulfill this requirement?

A3. Federal regulations do not define the scope of practice for podiatrists. Therefore, if a podiatrist, acting within the scope of his/her practice as defined by California State Law is permitted to perform a complete physical examination and evaluate the risk of the patient receiving general anesthesia, the podiatrist would be qualified to fulfill this requirement.

Mr. Timothy Wolf
November 21, 2001

Q4. Section 416.42(a) requires that before discharge from the ASC, each patient be evaluated by a physician for proper anesthesia recovery. May a podiatrist fulfill this requirement?

A4. As stated above, if a podiatrist, acting within the scope of his/her practice as defined by California State Law is permitted to perform a complete physician examination and evaluate the risk of the patient receiving general anesthesia, the podiatrist would be qualified to fulfill this requirement.

Q5. Section 416.42(b)(2) requires that the non-physician who administers anesthesia be under the supervision of the operating physician. May a podiatrist fulfill this requirement?

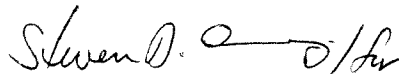
A5. Only if a podiatrist is permitted by California State Law to administer or supervise the administration of general anesthesia would he or she be permitted to supervise the administration of general anesthesia by a non-physician (e.g. CRNA). If podiatrists are not permitted, in accordance with state law to administer or to supervise the administration of general anesthesia, they would not be permitted to act in the role of the supervising physician.

Q6. Section 416.47(b)(2) requires that every medical record include significant medical history and results of physical examination. Would the history and physical examination performed by a podiatrist fulfill this requirement?

A6. Federal regulations do not prohibit podiatrists from performing history and physicals. Therefore, if it is within the podiatrist's scope of practice, as defined by California State Law to perform complete history and physical examinations (H&P), then an H&P performed by a podiatrist would meet this requirement.

In an effort to further clarify the California State Law outlining the scope of practice for podiatrist, the California Business and Professions Code may be an additional reference to your questions. If you have future questions regarding Ambulatory Surgery Centers, please call H. Donna Dymon, Ph.D. of my staff at 415.744.3703.

Sincerely,

A handwritten signature in dark ink, appearing to read "Janice M. Caldwell". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Janice M. Caldwell
Associate Regional Administrator